

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

APL MICROSCOPIC, LLC,
Plaintiff

v.

LIFESMIRACLE GROUP, L.P.
Defendant

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Civil Action No:

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff, APL MICROSCOPIC, LLC, a New York limited liability company, by and through undersigned counsel, brings this Complaint against defendant, LIFESMIRACLE GROUP, L.P., for copyright infringement, damages and injunctive relief, and in support thereof states as follows:

JURISDICTION AND VENUE

1. This is an action arising under the Copyright Act, 17 U.S.C. § 501.
2. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338.
3. Defendant is subject to personal jurisdiction because it is doing business in the State of Texas and in this this judicial district, the events giving rise to the claims occurred in the State of Texas and this district, and defendant engaged in infringement in the State of Texas and this district.
4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in the State of Texas and this district, defendant engaged in infringement in the State of Texas and this district, defendant does

business in the State of Texas and this district, and defendant is subject to personal jurisdiction in this district.

THE PLAINTIFF

5. Plaintiff APL MICROSCOPIC, LLC (“APL”) brings this action for violations of APL’s exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute APL’s original copyrighted work of electron microscopy.

6. APL is a New York limited liability company with its principal place of business in 379 West Street, New York, New York.

7. APL’s principal is Andrew Paul Leonard. Leonard is a highly skilled and experienced creator of microscopic photography. Currently, Leonard’s “cameras” include field emission scanning electron microscopes, and the recently discovered Carl Zeiss SMT, Orion Helium ion-beam scanner. Using a scientist’s tool and “eye” to capture the splendor of a miniscule world beyond the normal range of human vision, Leonard has documented cells and cellular bodies with high contrast experimental imagery and special optical effects to illustrate an infinitesimally small stage where color and light come together to create a commercial product unlike any available in the commercial photography market today.

8. Leonard’s images, which are assigned to APL, are highly desirable, particularly in the medical, pharmaceutical, and biological research industries. APL licenses its copyrighted works, such as the one in this case, to educational publishers, health care companies, and other medical institutions and businesses for use in connection with the study of biology and related fields. Leonard’s images are often licensed by APL for use in pharmaceutical advertising.

9. APL’s images are in high demand. Leonard’s micrography of a bone marrow stem cell was featured on the cover of Time magazine’s August 7, 2006 issue. Also that year,

Leonard's image of a human embryonic stem cell was featured in Time Magazine as one of "Best Photos" of 2006.

10. APL's images are unique and scarce. Leonard is one of only a very few photographers who are capable of producing quality images of cells. Few if any photographers besides Leonard have successfully captured a quality image of a bone marrow stem cell.

11. Andrew Paul Leonard's livelihood depends, in part, on the ability to control the licensing of his works.

THE DEFENDANT

12. Defendant LifesMiracle Group, L.P. ("LifesMiracle") is a Nevada limited partnership registered to do business in Texas.

13. LifesMiracle's principal place of business is 3536 Marsh Place, Amarillo, TX 79121.

14. LifesMiracle is in the business of selling dietary supplements.

15. LifesMiracle maintains a website on the internet at www.lifesmiracle.com. LifesMiracle also maintains a Facebook page at <https://www.facebook.com/Regenerationfactor>.

FACTS OF THE CASE

16. APL Microscopic incorporates the allegations of paragraphs 1 through 15 of this complaint as if fully set forth herein.

17. Andrew Paul Leonard made an original photograph of human bone marrow stem cell using microscopic photography. That photograph, titled "Scanning Electron Microscopy of Human Bone Marrow Stem Cell Image No. 1" (hereinafter "Image No. 1") was registered with the Copyright Office on December 20, 2007 and assigned Registration No. VA 1-426-179. The certificate is attached as Exhibit 1.

18. APL owns the copyright in the work Image No. 1 by assignment from Andrew Leonard.

19. The work is the property and a highly valuable asset of APL.

20. APL is the sole owner and has the exclusive right to license this work.

21. Beginning in 2014, LifesMiracle copied and displayed APL's copyrighted Image No. 1 photograph in its video presentation titled "The Regeneration Factor". Image No. 1 was also posted on LifesMiracle's website and Facebook page as a link to "The Regeneration Factor" video. This was done for the purpose of advertising and marketing its products and services as shown in Exhibit 2.

22. LifesMiracle copied, displayed and distributed APL's copyrighted work entitled "Scanning Electron Microscopy of Human Bone Marrow Stem Cell Image No. 1."

23. LifesMiracle has never been licensed to use the Image No. 1 work for any purpose.

24. The works were copied, displayed and distributed by LifesMiracle without APL's permission.

25. LifesMiracle's use of the works resulted in the creation of derivative works that were not authorized by APL.

26. Andrew Paul Leonard made an original photograph of human bone marrow stem cell using microscopic photography. That photograph, titled "Scanning Electron Microscopy of Human Bone Marrow Stem Cell Image No. 4" (hereinafter "Image No. 4") was registered with the Copyright Office on December 20, 2007 and assigned Registration No. VA 1-426-177. The certificate is attached as Exhibit 3.

27. APL owns the copyright in the work by assignment from Andrew Leonard.

28. The work is the property and a highly valuable asset of APL.

29. APL is the sole owner and has the exclusive right to license this work.

30. Beginning in 2014, LifesMiracle copied and displayed APL's copyrighted Image No. 4 photograph in its video presentation titled "The Regeneration Factor" for the purpose of advertising and marketing its products and services as shown in Exhibit 4. The Regeneration Factor is found on its LifesMiracle's website and Facebook page.

31. LifesMiracle copied, displayed and distributed APL's copyrighted work entitled "Scanning Electron Microscopy of Human Bone Marrow Stem Cell Image No. 4" as shown in Exhibit 4.

32. LifesMiracle has never been licensed to use the work for any purpose.

33. The work was copied, displayed and distributed by LifesMiracle without APL's permission.

34. LifesMiracle's use of the work resulted in the creation of a derivative work that were not authorized by APL.

COUNT I
COPYRIGHT INFRINGEMENT

35. Plaintiff APL incorporates the allegations of paragraphs 1 through 34 of this complaint as if fully set forth herein.

36. APL owns a valid copyright in the Image No. 1 and Image No. 4 works.

37. APL registered the Image No. 1 and Image No. 4 works with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

38. LifesMiracle copied, displayed, and distributed the Image No. 1 and Image No. 4 works and made derivatives of the works without APL's authorization in violation of 17 U.S.C. § 501.

39. APL has been damaged.

40. The harm caused to APL has been irreparable.

41. Plaintiff has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

ADDITIONAL ATTORNEY

42. A motion for admission *pro hac vice* will be forthcoming for APL Microscopic's regular outside counsel: Joel B. Rothman of Schneider Rothman, Intellectual Property Law Group, PLLC, 4651 North Federal Highway, Boca Raton, Florida 33431.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

PRAYER

WHEREFORE, the Plaintiff APL prays for judgment against the Defendant that:

a. Defendant and its general partners, officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff its actual damages and Defendant's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504.

c. Plaintiff be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon; and

d. Plaintiff be awarded such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Benjamin H. Davidson, II
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